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DEPARTMENT FOR AF/EPS (MALLORY)  
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DEPARTMENT PASS TO TREASURY (IERONIMO)

E.O. 12598: N/A  
TAGS: [ETRD](#) [AGOA](#) [ECON](#) [NI](#)  
SUBJECT: NIGERIA - 2010 AGOA ELIGIBILITY REVIEW

REF: STATE 97769

11. Country: NIGERIA  
Current AGOA Status: Eligible

12. Country Background Summary: Estimated population of 151.3 million. 2008 GDP was \$212.1 billion; 2008 GNI per capita was \$1,160 (World Bank 2009 data). Nigeria continues to struggle to consolidate its fragile democracy following a civilian-to-civilian handover of power in its national and state elections in April 2007, which were seriously marred by irregularities and fraud. The government is making slow progress in developing an open economy, minimizing government interference, and promoting free market principles. On September 25, 2008 the Ministry of Finance announced a new tariff policy that reduced the number of banned import categories from 44 to 26 items and reduced tariffs on a wide range of products.

Comments on Eligibility Requirements - Market-based Economy  
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13. Major Strengths Identified: The government has committed to transitioning from a state-directed economy to one that is driven by market forces. The economy has witnessed overall macroeconomic stability in recent years. The foreign exchange rate remains fairly stable, although the domestic currency, the naira, depreciated during the last quarter of 2008 as a consequence of lower oil prices arising from the global economic crisis. The "Wholesale Dutch Auction" system of foreign exchange trading was introduced in early 2006, and led to a sharp reduction in the spread between the official and parallel market exchange rates. The government has also restructured its domestic debt portfolio from 91-day Treasury Bills to Bonds with one to ten-years' duration.

14. The government maintains a cordial and productive relationship with the IMF. Discussions are ongoing on a successor program to the Policy Support Instrument (PSI) which ended in August 2007. In July 2009, the IMF conducted an Article IV assessment of the Nigerian economy. The IMF assessment team considered the overall economic outlook as positive. However, it forecasts that economic growth will be slower than previous years because of revenue constraints resulting from lower oil prices, and lower credit to the private sector arising from banking reforms that have forced domestic banks to properly classify loans and withhold credit to the private sector. The Nigerian Electricity Regulatory Commission (NERC) has issued 25 licenses to private companies involved in electricity generation and distribution. A Multi-Year Tariff Order (MYTO) for the determination of charges and tariffs for electricity generation, transmission and retail tariffs is being implemented. The MYTO, which is to be implemented from July 1, 2008 to June 30, 2013, will result in the upward adjustment of the electricity tariff to market rates to ensure that investors in the power sector recover their investments and turn a reasonable profit. Some ports have been concessioned and an international company was awarded the concession to manage the country's largest port--Apapa Port in Lagos.

15. The Fiscal Responsibility Act to ensure transparency in the use of government revenue and a Public Procurement Act to ensure transparency and value for money in government procurement were passed in 2007. The Fiscal Responsibility Act has also been passed in 11 states of the federation, while it is at various stages of enactment in the remaining 25 states. Some states have also passed the Public Procurement Act.

16. The National Economic Empowerment & Development Strategy (NEEDS), a medium-term economic reform program (2003-2007) focused on privatization, good governance, macroeconomic stability, anti-corruption, and public service reforms, is undergoing review to incorporate President Yar'Adua's 'Seven Point Agenda', which focuses on energy, food security, land reforms, wealth creation, education, security, and transportation. The expected new economic reform document christened "Vision 20-20-20" is due to be presented to the public before the end of October 2009. Vision 20-20-20 will develop implementable programs aimed at making Nigeria emerge as one of the top twenty economies in the world by the year 2020. Savings from crude oil sales above the budget benchmark price have been put into a special reserve account, called the Excess Crude Account (ECA), rather than being used to fuel fiscal expansion. The government budget process is taking its rightful position as an economic policy and management tool and the President has promised an earlier submission of the draft budget for the coming year with the expectation that the National Assembly would pass the budget earlier. The budget deficit has been kept in check. However, current revenue constraints resulting from lower oil prices arising from the global economic crisis and insecurity in the Niger Delta may lead to higher budget deficits as the three tiers of government look for alternative sources to finance their respective budgets and

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resort to borrowing in the domestic money and capital markets. There are concerns about the degree of execution of the Capital Budget. Failure to execute fully is a drag on infrastructure investments. There are ongoing discussions about creating a Sovereign Wealth Fund, although the modalities and the form it will take have not been finalized.

17. Financial sector reforms are ongoing. The Central Bank of Nigeria (CBN) recently concluded a special audit of the 24 domestic banks to ascertain whether they have classified their loans in line with mandated prudential guidelines and whether they are also well-capitalized. The outcome of the special audit led to the replacement of the executive management of 8 banks, while 2 banks have been ordered to raise additional capital. The CBN also provided 620 billion naira (\$4.13 billion) in liquidity support and long-term loans to the 8 banks that were sanctioned to boost their liquidity. The remaining 14 banks were given a clean bill of health but were still asked to make further provisions for loans granted to petroleum product importers and capital market operators. Some domestic banks have received regulatory approval to raise additional capital. Pension and insurance reforms are also moving forward.

18. A Trade and Investment Framework Agreement (TIFA) with the U.S. provides a mechanism to address trade and investment issues. Nigeria is a top destination for U.S. investment in Africa, primarily due to investment in the petroleum sector. In 2008, U.S. exports to Nigeria increased 48 percent from 2007.

19. Major Issues/Problems Identified: Militant and criminal activities in the oil-rich Niger Delta have led to the shut-in of oil production, thereby reducing fiscal revenues to the Government of Nigeria (GON) with its attendant negative impact on budget implementation. An amnesty program that expired on October 4, 2009, led to a significant decline in militant violence and the partial restoration of shut-in production. However, the longer-term impact of the government's Delta peace efforts is unclear. Criminal activity in the Delta remains a serious concern. Building on the gains of the amnesty program, it is hoped that the government will intensify efforts to promote economic development in the region.

10. Inadequate and unreliable infrastructure is a major barrier to

private sector activity. The GON has adopted a Public-Private-Partnership (PPP) strategy for infrastructure provision. An Infrastructure Concession and Regulatory Commission has been established to regulate infrastructure PPP. However, a national policy on PPP has not been approved.

¶11. The Petroleum Industry Bill (PIB) is an omnibus legislation that will replace the existing 16 oil sector laws with one legal framework with clear rules, procedures, and institutions. The stated objective of the PIB is to bring about transparency, good governance, and reduce corruption. The international oil companies agree to the reform efforts. However, they have major concerns with specific elements of the bill that threaten profit and future investment. The bill has completed two readings in the National Assembly and public comment was completed July 27-31, 2009. A committee report is expected by October 23, 2009.

¶12. A court challenge was raised regarding whether the GON has the constitutional authority to set aside oil revenues that are above the budget benchmark price into the ECA. The constitution requires that all oil revenue should be deposited into the Federation Account and then shared among the federal, state and local governments. Despite this, the ECA was established in 2003 by the GON without passage of an enabling law. The government plans to introduce legislation that would legalize the ECA but a constitutional amendment may be required.

¶13. A large and inefficient public sector dominates and inhibits faster development of the formal sector. Much of the nation's wealth is concentrated in the hands of a tiny group of political and commercial elites through corruption and non-transparent government contracting practices.

¶14. Regulatory and tax regimes are arbitrarily enforced, and regulatory bodies are weak and ineffective. Oil and gas receipts account for 85 percent of government revenues and over 95 percent of foreign exchange earnings. Fuel subsidies are not budgeted or transparent, and fuel prices continue to be regulated and subsidized. Economic data and statistics are of unreliable quality and availability.

¶15. The establishment of the Nigerian Intellectual Property Commission (NIPCOM) that was announced in early 2007 is without passage of an enabling law. The 1978 Land Use Act mandates state ownership of land; private use of land is restricted to a 99-year lease and subject to government confiscation without Certificate of

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Occupancy or Governor's Consent. Conveyance of land requires high-level government approval, promoting corruption and inhibiting property transactions.

¶16. The Ministry of Finance announced on September 25, 2008 that the number of banned import categories would decrease from 44 to 26 items. Nevertheless, the continued existence of any ban is in violation of WTO rules. These import bans affect the import of many agricultural and manufactured products and encourage smuggling. Import bans accompanied by sole source importation rights for favored companies impede competition and are major impediments to the imports of a wide range of U.S. products. The Ministry of Finance has also stated that there may be tariff reductions on a wide range of products in the future. Comprehensive trade reform brought about by adoption of the ECOWAS Common External Tariff (CET) was agreed to in the last quarter of 2005. However, the government is presently reviewing its implementation of the CET. In line with the review, on September 25, 2008 the Ministry of Finance proposed a fifth band duty rate of 35 percent. This new proposed duty rate is a decrease from the GON's earlier proposal of 50 percent.

¶17. Some U.S. firms with contracts with government entities at the federal, state and local levels face problems receiving timely payments. The GON's procurement process lacks transparency. Nigeria's Cabotage Law is a barrier to trade and investment and has compelled U.S. shipping firms to exit Nigeria.

¶18. The GON wants existing oil and gas operators to invest in power production or refining, in an attempt to bring about investment in these sectors. Fuel subsidies distort the local market, discouraging investment in downstream oil and gas activities. Draft legislation mandating high levels of local content in oil and gas-related activities is in the National Assembly and may impose additional costs on investments.

¶19. The GON sometimes employs predatory negotiating tactics, including threats to block access to inputs, customs and other legal approval processes, and threats to transfer contracts to entities that cannot uphold contract terms. Foreign exchange repatriation regulations are enforced arbitrarily and hinder the transfer of funds. The Manufacturers-in-Bond Scheme has been canceled, and the Export Expansion Grant is the only export incentive available for exporters.

#### Political Reforms/Rule of Law/Anti-Corruption

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¶20. Major Strengths Identified: Elections were held in April 2007 for the President, national legislators, and state governors and assemblies. The elections represented the first transition from one civilian elected government to another since Nigeria's independence in 1960, but were deeply flawed. The Nigerian judiciary made several landmark decisions in 2007 and again in 2008, affirming its role as an independent arbitMwYDQQxhe gubernatorial elections were nullified, necessitating a re-run in those five states. Three gubernatorial election cases remain open pending appeals at the appellate court.

¶21. Nigeria has established programs to combat corruption, many of which receive support from bilateral and multilateral donors. The QEconomic and Financial Crimes Commission (EFCC) has arrested several high-level officials in connection with corruption cases since its establishment five years ago and is reported to have seized over \$5 billion in assets. The governor of Bayelsa State was impeached in December 2005 for money laundering and misappropriation of funds and had been on trial. He was released through a plea bargain that resulted in the forfeiture of several of his properties and bank accounts both locally and internationally. The EFCC claims it is continuing to investigate ongoing corruption charges against several former state governors and their associates. Approximately ten former state governors are currently facing corruption charges, and the cases against them are in varying stages of completion. Three former ministers and a serving senator are currently facing trial.

¶22. In 2005, the former Inspector-General of Police and the Minister of Education were fired for corruption. The former Inspector General was tried and subsequently jailed. The former Senate President was removed from his leadership post for corruption, though he retained his Senate seat. In 2007, the Speaker of the House of Representatives was removed from her position under allegations of corruption and misappropriation of House funds, although she retained her House seat. In 2008, two former Ministers of Aviation and the standing Minister of Health were charged with corruption, as well as the Director of the Police

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#### Equipment Fund.

¶23. Major Issues/Problems Identified: The elections of 2007 were marred by serious irregularities and fraud, with violence in some areas. International and domestic observers pointed to widespread corruption throughout the electoral process, including ballot stuffing, intimidation and violence, deliberate miscounting, results tampering, and exclusion of opposition candidates. More than 1,200 petitions were filed with the electoral tribunals contesting the announced results. The Independent National Electoral Commission (INEC), the body charged with the conduct of elections, is not independent, and it was alleged to have conspired with the ruling Peoples Democratic Party (PDP) to manipulate the outcome of the elections. Politicians continue to solicit support from, use, and manipulate militias and vigilante groups for their own interests.

¶24. Police and security forces continue to use excessive and

sometimes lethal force to beat protesters, suspects, detainees, and prisoners, and to conduct arbitrary arrest and detention. Perpetrators of violence frequently enjoy impunity for their deeds. The judicial system remains inefficient, corrupt, and in need of serious reforms, despite some recent improvement. Judges are subject to both extortion and intimidation, if not violence. Some judges are corrupt. Prolonged pretrial detention is an ongoing problem. The government does not provide citizens the right to a speedy and fair trial. Prison and detention conditions remain harsh and life-threatening. Some prisons held 200 to 300 percent more persons than their designated capacity.

¶25. Corruption remains an overwhelming problem at all levels of government and throughout the security forces. Despite the arrest of several high-ranking Nigerian officials by the EFCC, allegations continue that agency investigations target individuals that are out-of-favor with the government, while those that are in-favor continue their activities with impunity. The EFCC's inability to bring a number of corruption investigations to closure; the replacement of its internationally respected Chairman; and the transfer of many of its senior personnel have raised questions about the GON's commitment to fighting corruption.

¶26. An amnesty program for militants in the oil-rich Niger Delta ended on October 4. Early reports indicated the amnesty program led to a significant decline in militant violence, although criminal activity remained a serious concern. The longer-term impact of the government's Delta peace efforts is unclear.

¶27. Illegal oil bunkering has fueled corruption, arms trafficking, and political instability. There are anecdotal reports that the efforts of the GON's military Joint Task Force (JTF) have reduced illegal bunkering in certain areas.

#### Poverty Reduction -----

¶28. Major Strengths Identified: The National Planning Commission is reviewing NEEDS-2, Nigeria's homegrown Poverty Reduction Strategy. The National Poverty Eradication Program (NAPEP) is being implemented at the local government level, and is focusing on micro-enterprise development and other programs. A Microfinance Policy was launched by the CBN in 2005, with a requirement that all community banks convert to microfinance banks by December 31, 2007. Since 2007, at least 600 microfinance banks have met the stipulated requirements and have been licensed by the CBN. Some of the microfinance banks have been reported to be insolvent. Qmicrofinance banks have been reported to be insolvent.

¶29. Food and energy prices are increasing, putting pressure on poor families. The government has developed a program to start addressing agriculture and rural-led economic growth.

¶30. Major Issues/Problems Identified: Serious structural problems remain with unequal growth for the general public and high income disparities between rich and poor. The government's poverty strategy does not clearly link goals and methods; serious concerns remain about fiscal transparency; and human capacity for project implementation is weak. The GON is implementing the poverty reduction program slowly.

¶31. The country has been slow to meet its commitment to develop a compact to implement the Comprehensive African Agriculture Development Program (CAADP). Federal and state-level commitment to health and education reforms remains weak and progress against the key Millennium Development Goals is poor.

#### Workers' Rights/Child Labor/Human Rights -----

¶32. Major Strengths Identified: The Nigerian constitution protects

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the right of association and the right to organize and bargain collectively, but statutory restrictions remain. Most workers, except for members of the armed forces, police, employees designated



essential by the government, and employees in export processing zones may join trade unions and strike, but the law limits the justifications for strikes.

¶33. In 2002, Nigeria signed the International Labor Organization (ILO) Convention 182 on the Worst Forms of Child Labor, Convention 138 on Minimum Age for Employment, and Convention 111 on Equality of Occupation. Worker rights and child labor laws have been enacted. The Child Rights Act was approved in 2003, but has been enacted by only 20 of the 36 states. Nigerian law prohibits forced or bonded labor, forbids the employment of children younger than age 15 in commerce and industry, and restricts other child labor to home-based agricultural or domestic work for a maximum of eight hours a day.

¶34. The Ministry of Employment, Labor, and Productivity employs nearly 400 inspectors for all business sectors, but fewer than 50 inspect factories. The Ministry also sponsored awareness-raising and law-familiarization training programs for local law enforcement, customs, and other government officials. In 2003, new legislation outlawing human trafficking was passed, and the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) was established.

¶35. The country made progress in the area of human rights, including making several arrests for trafficking in persons. However, serious problems remain, such as the continued lack of accountability for past abuses. The Constitution provides for freedom of religion, and the government generally respects that right, although some state governments place restrictions on freedom of religion.

¶36. The GON's relationship with the two union federations (the Nigerian Labor Congress and the Trade Union Congress) has improved with the swearing in of President Yar'Adua's administration. A national labor strike in June 2007 was peaceful, with security forces and labor members showing considerable restraint. The Yar'Adua administration reversed several labor-opposed policies of the Obasanjo government as a result of the strike. These include a partial reduction of the fuel price increase and a guarantee not to raise the price further for one year, a reversal of the VAT increase, a review of the Port Harcourt and Kaduna refinery sales, and an agreement to pay an owed civil servant salary increase.

¶37. Major Issues/Problems Identified: The Trade Unions Act does not ensure the workers' right to form and join unions of their own choosing, deems all registered trade unions to be affiliated with a central labor organization, and violates the ILO convention on the Right of Association. The Trade Unions (Amendment) Decree of 1996 makes check-off payment of dues conditional on a "no-strike" clause during the lifetime of the collective agreement. The Trade Unions Amendment Act of March 2005 criminalizes meetings between labor and civil society organizations and bans nation-wide strikes on issues of national economic policy. However, these sections of the law have not been enforced in practice.

¶38. Labor rights have been limited by targeted layoffs and terminations of labor activists, by intimidation to press workers to leave unions, and by the increased use of casual labor, especially in the oil industry. Several statutory restrictions on the right of association and on trade unions restricted the right to form or belong to any trade union or association. There are no laws to prohibit retribution against strikers, but strikers who believed they were victims of unfair retribution could submit their cases to an Industrial Arbitration Panel (IAP). The decisions of these bodies infrequently carried the force of law.

¶39. The labor laws apply to legal foreign workers, but not all companies respected these laws in practice. Payments of salaries to federal, state and local government workers are often several months in arrears and workers who protest or strike over arrearages face dismissals, threats of layoffs, and pressure to agree to lower minimum wages. The GON places limits on freedom of assembly and association, citing security concerns.

¶40. Nigeria is a source, destination, and transit country for persons trafficked for forced labor and sexual exploitation. Young boys were trafficked primarily to work as forced bondage laborers, street peddlers, and beggars, while girls were trafficked for

domestic service and commercial sexual exploitation. Child labor continues to be a problem. The Child Rights Act has only been ratified by 20 states. Domestic violence and discrimination against women remain widespread, underreported, and socially acceptable. Police rarely intervene in cases of domestic abuse. Rape and sexual harassment are common. Women and girls in all parts of the country are subjected to female genital mutilation (FGM), which the

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government publicly opposes, but has taken no legal action to curb. Laws protecting the rights of the child are inadequate and seldom enforced. Child abuse, abandonment, and exploitation for labor or sex remain serious problems.

¶41. The law prohibits homosexuality; homosexual practices are punishable by prison sentences of up to 14 years. Adults convicted of having engaged in homosexual intercourse are subject to execution by stoning in the 12 northern states that have adopted Shari'a law. However, this sentence has not yet been handed down in practice. Persons living with HIV/AIDS experienced widespread discrimination in seeking employment and health care services.

#### International Terrorism/U.S. National Security

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¶42. Major Strengths Identified: In June 2007, the Nigerian Financial Intelligence Unit (NFIU) was admitted as a member of the Egmont Group of FIUs. In June 2006, Nigeria was de-listed from the Financial Action Task Force list of Non-Cooperative Countries and Entities. The NFIU, EFCC, CBN, Securities and Exchange Commission, and other regulators in the financial services industry are collaborating to identify and freeze terrorist assets in Nigeria.

¶43. Major Issues/Problems Identified: Militant activities in the Niger Delta have led to a reduction in oil production, reducing revenues to the federal government and hampering effective implementation of the national budget. Events in Nigeria can negatively affect world oil supplies and prices.

¶44. There are concerns about the president's health and the impact it has on the administration of government. Some Nigerians opine that the current administration is too slow in implementing its programs.

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